

w/o
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

FILED	
DATE: <u>5-11-11</u>	O'Clock <u>9</u> P.M.
Sandra K Markham, Clerk	
BY: <u>RHONDI HAGEN</u> Deputy	

DIVISION PRO TEM B

SANDRA K MARKHAM, CLERK

HON. WARREN R. DARROW

BY: R. Hagen, Deputy Clerk

CASE NO. V1300CR201080049

DATE: May 11, 2011

TITLE:
STATE OF ARIZONA,

COUNSEL:
Yavapai County Attorney
By Sheila Polk
Bill Hughes
(Via OnBase)
(For Plaintiff)

(Plaintiff)

v.

JAMES ARTHUR RAY,
(Defendant)

Thomas K. Kelly
(Via Electronic Mail)
(For Defendant)
and
Luis Li/Brad Brian/Truc Do/Miriam Seifter
MUNGER TOLLES & OLSON LLP
(Via Electronic Mail)
(For Defendant *Pro Hac Vice*)

HEARING ON:
JURY TRIAL – DAY 41
START TIME: 9:03 a.m.

NATURE OF PROCEEDINGS

COURT REPORTER
Mina Hunt

APPEARANCES:

Sheila Polk, Counsel for State
Bill Hughes, Co-Counsel for State
Detective Ross Diskin, Case Agent
James Arthur Ray, Defendant
Tom Kelly, Counsel for Defendant
Luis Li, *Pro Hac Vice* Counsel For Defendant
Truc Do, *Pro Hac Vice* Counsel For Defendant
Miriam Seifter, *Pro Hac Vice* Counsel for Defendant

The Court, Counsel, Detective Diskin and Defendant are present.

Counsel for State objects to Defendant's use of a transcript from another witness during yesterday's cross examination of Dr. Dickson. Argument ensues. The Court states that relaying a statement from another witness for a reaction is something that would be done. Counsel advise that it appears this issue has been taken care of. The Court directs that in the future these are appropriate questions and instructs Defense Counsel regarding the form of these questions.

Court and Counsel discuss scheduling. The Court advises that any time limits must be fair for both sides.

~~~Recess~~~

At 9:21 a.m. the trial reconvenes with all previously appearing parties and the Jury present.

Dr. Matthew Dickson, previously sworn, resumes the witness stand for further testimony.

The Jury and the witness are admonished and excused for a recess.

The Court and Counsel discuss time limits. Counsel are advised the Court is researching the original anticipated date for end of trial.

~~~Recess~~~

At 11:10 a.m. the trial reconvenes with all previously appearing parties and the Jury present.

Dr. Matthew Dickson resumes the witness stand and testifies further.

Exhibit 1017 is marked, offered and admitted into evidence without objection.

The Jury and the witness are admonished, excused for the noon recess and exit the courtroom

Defense Counsel moves to redact admitted Exhibit 1017. Argument ensues. The Parties are directed to discuss this issue between themselves. The Court will make a ruling at a later time.

The Court and Counsel discuss June 21st as the ending date of trial and related Juror issues. Counsel will consider the issues during the noon recess.

Counsel for Defendant addresses the Court regarding objections to specific testimony of a future witness. Argument ensues. The Court **finds** there have been suggestions regarding an incomplete investigation; that what has to be avoided is speculation as to obstructing; and advises that real Rule 602 evidence may be factually presented. Counsel for State avows that the evidence will be presented factually.

~~~Noon Recess~~~

At 1:29 p.m. the trial reconvenes with all previously appearing parties and the Jury present.

Dr. Matthew Dickson resumes the witness stand and testifies further.

Exhibit 1008 is admitted into evidence pursuant to stipulation of Counsel.

The Jury and the witness are admonished, excused for a recess and exit the courtroom

The Court and Counsel resume discussion with regard to Exhibit 1017. The Court states that it needs to be made clear that other information was provided and all this exhibit contains is medical records. Counsel are advised to inform the Court as to what needs to be done.

Counsel are advised that the Court needs to review Exhibits 401, 406 and 410.

Discussion resumes regarding the ending trial date and the Juror issue. Defense Counsel consents to the subject Juror being excused. Counsel for State objects. Discussion ensues. Counsel are advised that the Court intends to address the issue with the Juror.

With regard to the issue prior to the noon recess regarding testimony of a future witness, the Court advises that post-event evidence/testimony is not a simple issue. The Court raises the distinction between pre-event and post-event. Discussion ensues. The Court advises if there is a proper instruction, the evidence might come in although it is tenuous. Counsel for State advises it will not address the subject evidence with the witness with a cautionary caveat to Defense Counsel.

Counsel for State advises Court and Defense of witness scheduling issues.

~~~Recess~~~

At 3:30 p.m. the trial reconvenes with all previously appearing parties and the Jury present.

Dr. Matthew Dickson resumes the witness stand and testifies further.

The Court and Counsel conduct a sidebar discussion on the record. The witness is asked and answers appropriate questions submitted by the Jury.

The witness is advised of the Rule excluding witnesses and is temporarily excused subject to recall.

Sgt. Frank Barbaro is sworn and testifies.

Exhibits 274 and 276 are offered and admitted into evidence without objection.

The Jury is admonished, excused for the day and leaves the courtroom. The witness is advised of the Rule of exclusion of witnesses, excused for the day and leaves the courtroom.

Discussion ensues regarding trial scheduling and Juror #10.

Juror # 10 enters the courtroom and is advised regarding the trial schedule. The Juror leaves the courtroom.

The Court stands adjourned for the day.

END TIME: 5:08 p.m.

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)
Stone & Magnanini, Co-Counsel Brown Family (e)
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)
Step toe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)
Division PTB (e)
Victim Services (e)
Court Administration
Customer Service Supervisor, Camp Verde Superior Court Bldg.